

**STAFF RECOMMENDATION CONCERNING
CIDFAC'S PROCEDURES FOR
ALLOCATING TAX-EXEMPT CAP TO
INDUSTRIAL DEVELOPMENT BOND
PROJECTS**

Staff Recommendations

January 28, 2009

STAFF SUMMARY – CIDFAC

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ISSUE

At its January 28, 2009 meeting, the California Debt Limit Allocation Committee (CDLAC) will hear its staff's proposal that the Committee award Small-Issue Industrial Development Bond Allocation to CIDFAC for the purpose of administering the Industrial Development Bond (IDB) Program. If CDLAC approves the request, then CIDFAC will approve both the issuance of IDBs by local issuers and the allocation of IDBs to local issuers and the California Infrastructure and Economic Development Bank (the "I-Bank"). This "one-stop shop" process would start at CIDFAC's January 28, 2008 meeting.¹ Neither CDLAC nor CIDFAC staff has received any indication that the IDB community opposes this proposal, and this was the process utilized in the 2008 IDB allocation pool.²

In anticipation of receiving the award of IDB allocation, CIDFAC must adopt a process by which it will approve allocation for individual projects. Staff recommends the Commission adopt a process whereby IDB allocation rounds may become competitively based upon the public benefits point scheme in CDLAC's procedures. Staff does not feel that utilizing competitive rounds is necessary at this point, but reserves the right to enact this policy if the need arises.

Staff bases its recommendation on two factors: (1) CIDFAC's 2009 informal survey of issuers and practitioners which shows a possible demand of more than \$211 million; and (2) there are established procedures and precedent for competitive allocation rounds.

BACKGROUND

In November and December 2008, CIDFAC staff polled the state's active IDB issuers and industry practitioners to determine the likely pipeline of IDB transactions. Of the possible \$222 million in projects requesting IDB financing, we determined that demand would more likely be closer to \$211 million. Demand for 2008 reached approximately \$131 million, but the results of our informal poll showed that this year's demand may exceed 2008 levels. Staff does not believe

¹ Note that, beginning with the establishment of CIDFAC's Small Business Program (SBP) in 2001, CDLAC has awarded allocation out of the overall IDB pool to CIDFAC, which in turn has awarded the allocation to individual projects qualified under the SBP. For SBP projects, CIDFAC both approves the issuance of IDB bonds by local issuers as well as grants tax-exempt allocation to local issuers and the I-Bank.

² The proposal is beneficial to issuers, practitioners, and CIDFAC because it eliminates the need to gain approval of two separate boards (namely, CIDFAC and CDLAC) at two separate meetings and because CIDFAC meets on monthly basis, thereby making allocation awards possible on a monthly rather than a bimonthly basis.

that current allocation rounds should be declared competitive. Should the need arise, however, further rounds may be conducted as competitive based on existing CDLAC procedures.

CDLAC's procedures provide for competitive, or "allocation" rounds when a particular pool of allocation is oversubscribed. Section 4, Allocation of the State Ceiling, reads in part:

"As soon as practicable after the beginning of each calendar year, and before any Applications are considered, the Committee will determine and announce the establishment of either an open Application process or an Allocation round process, or both. The Committee will determine which process is best for each program pool based on the estimated competition and characteristics of each pool. If the Committee estimates that a program pool will be non-competitive or evenly subscribed, then the Committee shall establish an open Application process. If the Committee estimates that a program pool will be competitive, then the Committee shall establish an Allocation round process. The Committee may provide for a combination of the open Application process and the Allocation round process for a pool as necessary to best meet the needs of a specific program or pool. For example, the Committee may establish an open Application process from January through August and an Allocation round process from September through December..."

Allocation Round Process

- 1. Establish the number and the tentative respective dates of the Allocation Rounds to be held during the year for the purpose of the Committee's Allocation of the State Ceiling Pools created pursuant to these Procedures.**
- 2. Determine and announce the portion of the State Ceiling that will be available in each of the Allocation Rounds for each of the State Ceiling Pools that is created by the Committee pursuant to subsection II of this Section 4.**
- 3. Determine and announce the deadlines for Applicants to submit Applications for consideration during each of the Allocation Rounds..."**

CDLAC's procedures also establish means by which to evaluate all applicants. Section 16, Evaluation Criteria Applicable to All Applications, reads in part:

"...Wherever these Procedures require that an Applicant demonstrate a certain condition or characteristic or satisfy certain minimum requirements, each condition, characteristic or minimum requirement must be demonstrated by the Applicant, at the time of Application, by clear and convincing evidence...It is the responsibility of each Applicant and each Project Sponsor to provide the Committee with complete and accurate information at the time the Application is filed to enable the fair and correct application of the Committee's criteria to the Application. If the Applicant/ or Project Sponsor (or their attorneys, agents, employees, or other representatives) provides information that is incomplete, erroneous, inaccurate, misleading or false regarding a fact material to the decision-making process, the Application may be rejected. If the incomplete, erroneous, inaccurate, misleading or false information is discovered after an Allocation is made, the Allocation may be rescinded, if bonds have not been sold...If bonds have been sold...the Committee may take action as it deems appropriate...Wherever these Procedures contemplate the awarding of points to an Application, the Applicant must demonstrate by clear and convincing evidence that the related criterion has been satisfied. Upon a determination that a particular criterion has not been satisfied, the related points shall not be awarded."

As specified in CIDFAC staff reports, CIDFAC evaluates IDB Projects using the IDB 85-point scheme contained in CDLAC's procedures. Section 20, Allocation System for Small-Issue Industrial Development Bond Projects, reads in part:

“Upon a determination that an Application has met the minimum requirements...the following criteria will be used to evaluate, rank and award Allocations from the Small-Issue Industrial Development Bond Pool...Community Economic Need (25 points maximum)...Job Creation and Job Retention (25 points maximum)...Welfare To Work Plan (5 points maximum)...Payment of Employee and Dependent Medical, Dental, Vision and Child-Care Costs (5 points maximum)...Average Hourly Wage (5 points maximum)...Land Use/Energy Efficiency (15 points maximum)...Leverage (5 points maximum)...If, after awarding points...two or more Applications are awarded the same number of points, the Executive Director will divide the Allocation amount requested by each such Application by the number of jobs created by the related project, and will rank the Applications based on the lowest amount of requested Allocation per job created.”

Using CDLAC's allocation procedures as a guide, staff developed the following allocation process for the award of IDB allocation to individual projects and recommends that CIDFAC adopt this process.

RECOMMENDATION

Under the assumption that CDLAC will approve the proposal that CIDFAC allocate IDB tax-exempt cap beginning in January 2009, staff recommends that the Commission allot \$20 million for CIDFAC's Small Business Program. The remainder of the allocation award will be available for core IDB projects.

In addition, staff recommends that the Commission reserve the option to declare 2009 IDB allocation rounds as competitive if the need arises. Staff recommends that, for each competitive round, the Commission shall allocate a maximum of \$20 million out of the IDB cap. By doing so, CIDFAC will award allocation to the most competitive projects as they become ready for financing rather than award allocation on a first-come, first-served basis without weighing the relative public benefits provided by each project. Any of the \$20 million not used in an allocation round will be transferred to the following round, thereby creating the possibility of allocation rounds in which the amount available will exceed \$20 million.

Further, staff recommends that the CIDFAC board reserve the option to increase the cap available at an allocation round by up to \$2 million, provided that such amount is available in the IDB pool, if the board determines projects in a particular round should be awarded such additional amount. Staff believes the availability of an additional \$2 million per round will allow the board to provide full allocation to highly competitive projects under circumstances where the entire allocation request exceeds \$20 million by up to \$2 million. For example, if CIDFAC received three applications for projects that met all minimum requirements and that received substantial points in the areas of job creation, community need, and medical benefits, and the allocation request for the three projects totaled \$20,500,000, then the Board would have the option of awarding the entire allocation requested, provided this amount was available in the IDB pool. Staff believes that the \$2 million amount is large enough to provide flexibility in these circumstances, but not so large as to impair subsequent allocation rounds.

Finally, staff also recommends that CIDFAC adopt the following procedures:

- (1) CIDFAC shall accept the existing form of CDLAC small-issue IDB application for CIDFAC approval and for IDB allocation for all proposed projects, including projects that qualify for the Small Business Program. Applicants shall continue to provide completed applications at least 30-days in advance of the CIDFAC meeting at which they would like their projects considered.
- (2) CIDFAC shall continue to use CDLAC's allocation criteria and point scheme to evaluate and rank IDB projects.
- (3) In the case of competitive rounds, CIDFAC staff will recommend approval of and the award of allocation up to \$20 million to proposed projects that (1) meet the existing minimum requirements of CDLAC and CIDFAC and (2) receive the greatest number of points under CDLAC's existing point scheme for that particular round. Applications for projects that are not recommended for approval in a particular competitive round may be resubmitted in subsequent rounds.